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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2019/2020

UCP4622 – CRIMINAL PROCEDURE II (All Sections / Groups)

02 MARCH 2020

Reading Time : 9.00 a.m. – 9.15 a.m.

(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 6 pages with 5 Questions only.
3. Attempt **ALL** questions in **PART A** and any one questions in **PART B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statutes into the exam venue:
i. Criminal Procedure Code ii. Penal Code
“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A: Compulsory**Instruction:** Attempt **ALL** questions.**QUESTION 1**

(a) OKT was convicted for house trespass, an offence punishable under Section 448 of the Penal Code. The sentence imposed by the Magistrate's Court was an imprisonment term of 6 months, and a fine of RM3,500.00, in default, imprisonment for 3 months. OKT wishes to appeal against conviction and sentence.

Explain to OKT the procedure for appeal.

(5 marks)

(b) Explain the ways by which an appeal can be discontinued.

(20 marks)

(Total: 25 marks)**Continued...**

QUESTION 2

(a) On 12.1.2020 at about 9.00 p.m, at a car park at Blok B Melor, Pelangi Damansara PJU 15, Persiaran Suria Damansara in Selangor, Darth Maul and Boba Fett was charged in the High Court in Shah Alam for the offence under section 302 of the Penal Code read with section 34 of the said Code for causing the death of one Finn.

During the prosecution's case, the arresting officer, Inspector Lenny testified that Darth Maul, Boba Fett, Rose Tico were arrested by a police party on the same day of the alleged offence. Inspector Lenny said that the investigating officer, Inspector Zee, recorded a statement from Rose Tico under section 112 of the Criminal Procedure Code and then released her.

The Prosecution then called Rose Tico as a witness. In examination-in-chief, Rose Tico said that she is Darth Maul's lover. Rose Tico then told the court that she was sitting with Darth Maul, Boba Fett and Finn in a car parked at the road side when suddenly several men surrounded their car and had asked them to come out. Rose Tico said the men identified themselves as a police and started attacking Finn. Darth Maul, Boba Fett and Rose Tico helplessly watched these several men attacking Finn. One of the man who identified himself as a police while attacking Finn said 'hoi, kamu belum mati ke?'. Afraid for their lives, Darth Maul, Rose Tico and Boba Fett ran away from the scene of the crime. The next day Rose Tico was informed by Darth Maul that Finn was killed.

Although there were contradictions in the evidence of this witness, the learned High Court Judge was not persuaded that these were material enough to warrant an impeachment proceeding against Rose Tico as applied for by the Prosecution.

With reference to relevant statutory provision and decided cases, discuss the procedure to be followed in the impeachment proceeding against Rose Tico and explain whether the Judge was correct in his decision not to allow the impeachment proceedings.

(15 marks)

(b) Demonstrate the duty of a Magistrate in holding an inquiry on the death of a deceased?

(7 marks)

(c) Illustrate the procedure at the conclusion of the trial in a high court.

(3 marks)

(Total: 25 marks)

Continued...

QUESTION 3

OKT was tried and convicted by the Kuching Sessions Court in 2005 on a charge of outraging the modesty of a child under Section 354 of the Penal Code. The initial charge was one of rape under Section 376 of the Penal Code but at the end of the prosecution case, the Sessions Court Judge (SCJ) amended the initial charge to one of outraging the modesty of a seven-year-old girl by inserting his finger into her vagina and ordered OKT to enter his defence to the amended charge. At the end of the case, OKT was found guilty. In mitigation by the learned counsel for OKT, it was pleaded that OKT was a first offender; that he had regretted his action; and that there was no violence involved. OKT was sentenced to seven years' imprisonment and three strokes of whipping. He appealed against the conviction and sentence.

Based on the above –

- (a) Assess whether the sentence given by the SCJ was manifestly excessive such that it required an appellate court to interfere with it. (12 marks)
- (b) In line with the recent amendment in the process of sentencing, analyse whether the sentence could have been different if the offence had been committed in 2013. (13 marks)

(Total: 25 marks)

Continued...

PART B:

Instruction: Attempt **ONE** question only.

QUESTION 4A

(a) Newbird was charged in the Magistrate's Court at Kuala Lumpur for an offence of cheating under section 420 of the Penal Code. Newbird engaged Rohan as his counsel.

On the day of the trial, Rohan did not attend the Court as he was engaged in another Court. The Magistrate, Tuan Johan adjourned the case to another date.

On the next trial date, Rohan again sought a postponement as he was leaving for a law conference in Canada on that day. The Magistrate, Tuan Johan again obliged and postponed the case.

When the case came up for trial again, another counsel, Lukman came to Court and said that he was representing Newbird and requested for a postponement. The Magistrate, Tuan Johan gave a final postponement.

On the new date, the trial commenced, Lukman after cross examining the second prosecution witness informed the Court that he was applying to discharge himself as Newbird did not give him proper instruction. The Court allowed Lukman's application and Lukman left the courtroom.

The Magistrate, Tuan Johan then instructed Newbird to proceed with the case. Newbird informed the Magistrate that he wanted to engage another counsel and applied for a postponement. The Magistrate, Tuan Johan refused to grant the postponement and proceeded with trial. After completing hearing the second prosecution witness, the Magistrate, Tuan Johan adjourned the proceeding to another date. The Magistrate, Tuan Johan then informed Newbird that he could engage another counsel who was able and willing to defend him at the next trial date.

On the date of the continued hearing, another Magistrate, Puan Malathi sat in court and ordered the prosecution to continue with the case after informing the Prosecution Officer and Newbird who was still undefended that the former Magistrate, Tuan Johan, had resigned from the service. The Magistrate, Puan Malathi, at the conclusion of the trial convicted and sentence Newbird to three years' imprisonment. Newbird intends to appeal against the conviction and sentence.

Continued...

With reference to statutory provisions and decided cases consider the following grounds:

- (i) That the Magistrate, Tuan Johan was wrong in law in refusing an adjournment to enable him to engage a counsel of his choice;
- (ii) That the whole trial was a nullity by reason of the hearing of the part-heard proceedings by the Magistrate, Puan Malathi.

(17 marks)

(b) Elaborate on whether an accused is allowed to withdraw a guilty plea?

(8 marks)

(Total: 25 marks)



Continued...

Or

QUESTION 4B

(a) The accused person was charged for criminal breach of trust. During the trial, the prosecution tendered more than 750 exhibits, including bank documents relating to the accused bank accounts, cash transactions, minutes of meetings and Blackberry Messenger chats over the accused transactions. The prosecution has successfully adduced credible evidence proving each and every essential ingredient of the offences of abuse of position for gratification, criminal breach of trust and money laundering as framed in the charges. The court found a *prima facie* case and called for defence.

With reference to statutory provisions and decided cases, advise the parties on the options available on the accused person and its effects when called for defence.

(12 marks)

(b) At an earlier trial in the Session Court, Lucas was convicted for possession of heroin and methamphetamine. The chemist report was duly served on Lucas at the earlier trial. Lucas filed an appeal on his conviction and sentence.

One year later, the decision of his appeal is an order for retrial on the same charge for possession of heroin and methamphetamine. The Prosecution relied on the same chemist report although it has not been re-served on Lucas. The chemist also was not called to give evidence during trial. The new Session Court Judge held that the chemist need not be called and admitted the chemist report as evidence, whereupon Lucas was convicted again after the close of the defence case.

Advise Lucas whether the conviction is legally sustainable.

(13 marks)

(Total: 25 marks)

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